

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer W-76504.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

APPEARANCES: Bob F. Abernathy, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Bob F. Abernathy has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 21, 1982, rejecting his noncompetitive oil and gas lease offer, W-76504, submitted following notification

that his simultaneous lease application had received first priority for parcel WY 4478 in the August 1981 drawing. <sup>1/</sup> BLM rejected the offer based on a May 14, 1982, report from the Minerals Management Service (MMS) that the lands in WY 4478 are within an area designated as the Robbers Gulch undefined known geologic structure (KGS) effective May 13, 1982. <sup>2/</sup> BLM noted that effective December 14, 1981, the SW 1/4 SW 1/4, sec. 21 was determined to be within an undefined unnamed KGS, and that the May 1982 determination encompassed all lands in the offer.

In his statement of reasons, appellant argues, first, that BLM did not make a timely determination on his lease application, that the 10-month delay between the drawing and decision rejecting his offer was an extraordinary delay, and that, if BLM had acted more promptly, the lease would have issued before the additional developments which prompted the May 1982 KGS determination. Second, he contends that the evaluation effective December 1981, determined that a majority of the acreage was not KGS. Finally, appellant questions the MMS decision to include this land in the undefined KGS. He argues that the producing intervals in this area are discreet sand intervals with limited lateral continuity and asserts that there is a question as to the subject acreage being proven productive.

[1] Land within a KGS of a producing oil or gas field may be leased only after competitive bidding pursuant to 43 CFR 3120. 30 U.S.C. § 226(b) (1976). Thus, if lands embraced in a noncompetitive offer are designated as being within a KGS before issuance of a lease, the noncompetitive lease offer must be rejected as to those lands. Lida R. Drumheller, 63 IBLA 290 (1982); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd, DiMarco v. Watt, Civ. No. 81-2243 (D.D.C. Mar. 25, 1982). This Department has no discretion under the law to issue a noncompetitive lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

As explained in Kenneth L. Hanlin, 70 IBLA 115, 116 (1983):

The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes priority of filing. 43 CFR 3110.1-6(b). See Guy W. Franson, \* \* \* [30 IBLA 123 (1977)]. Under 43 CFR 3112.4-1(a), a priority applicant's timely submission of the properly signed lease and required rental constitutes an offer to lease. The signing of this offer by the authorized BLM officer is the act that constitutes acceptance of the applicant's offer and creates a binding contract. 43 CFR 3112.4-2. The date of signing is the date of lease issuance and the determinative date with respect to the rights of the offeror. [Emphasis in original.]

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<sup>1/</sup> The offer was for 800 acres in the NE 1/4 NE 1/4, S 1/2 NE 1/4, SE 1/4 of sec. 17, the S 1/2 NE 1/4, SE 1/4 of sec. 18, and the NW 1/4, N 1/2 SW 1/4, SE 1/4 SW 1/4 of sec. 21, all in T. 14 N., R. 92 W., sixth principal meridian, Carbon County, Wyoming. In its decision BLM incorrectly identified the parcel as WY-2705.

<sup>2/</sup> "Known geologic structure" is defined in 43 CFR 3100.0-5(a) as "Technically the trap in which an accumulation of oil and gas has been discovered by drilling and determined to be productive, the limits of which include the acreage that is presumptively productive."

Thus, the 10-month delay between the drawing date and the declaration that the area was within a KGS does not aid appellant since he acquired no vested right to a lease but only an inchoate right to receive a lease over a later applicant. Donnie R. Clouse, 51 IBLA 221 (1980); Minnetta A. Miller, 17 IBLA 245 (1974). BLM was required by statute to reject appellant's offer following the MMS determination. Minnetta A. Miller, *supra* at 248.

Further, we note a well established principle. The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by its officers' failure to act or delay in the performance of their duties. 43 CFR 1810.3(a); Kenneth L. Hanlin, *supra*; Otay Mining Co., 62 IBLA 166 (1982).

[2] An applicant for an oil and gas lease who challenges a determination by MMS that the lands are situated within the KGS of a producing oil or gas field has the burden of showing that the determination is in error. Donnie R. Clouse, *supra*; United States v. Alexander, 41 IBLA 1 (1979), *aff'd*, Alexander v. Andrus, No. 79-603-M (D.N.M. July 7, 1980).

BLM submitted a memorandum from the District Supervisor, Resource Evaluation, Bureau of Land Management, 3/ Casper, Wyoming, dated January 11, 1983, which provided supporting documentation for the KGS determination. That memorandum provided in part:

The undefined addition to the Robbers Gulch undefined Known Geologic Structure which affected the subject lands was made effective May 13, 1982, the date the Robbers Gulch area was reviewed. Eighteen newly completed wells were considered in making the addition. The newest of the eighteen wells was completed in April 11, 1982, a date prior to the date of the letter written by Bureau of Land Management rejecting the offer for the subject lands. The Abernathy Exploration Company states that production in this area is not from continuous stratigraphic intervals which cover large areas. A review was made of geophysical logs from wells near the subject lands. Some producing sands under the subject lands appear to be continuous, for example, the top Almond sandstone as located in T. 14 N., R. 92 W., secs. 15, 16, and 20. It is recognized that all production in the field is not from a single sand. However, it is not necessary that the government prove that the Mesaverde production is all from continuous stratigraphic intervals. The definition of the known geologic structure is as follows (see Federal Code of Regulations; 43 CFR 3100.0-5): "A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which

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<sup>3/</sup> By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the Minerals Management Service to, *inter alia*, take over the functions of the Conservation Division, Geological Survey. Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the Minerals Management Service and the Bureau of Land Management within BLM. This Order was amended on Feb. 7, 1983, but the amendment is not relevant to this discussion.

include all acreage that is presumptively productive." The evidence in the area gives clear reason to believe that the subject lands are presumptively productive. The evidence is as follows:

1. All seven wells drilled within a mile of the subject lands were wells completed for gas production, a success ratio of 100% (The seven are located in T. 14 N., R. 92 W., secs. 7, 8, 15, 16, 20, and 29, and T. 14 N., R. 93 W., sec. 13).
2. All fourteen wells drilled within a mile and a half of the subject lands were completed for gas production, a success ratio of 100%. These wells form a complete circle about the subject lands.
3. The trap has not been depleted (None of the wells mentioned have been abandoned).

Appellant has the burden of showing that the Government is in error. He asserted repeatedly that there is a question in his mind whether the subject acreage has been proven productive or there are any two wells that produce from the same reservoir. Such conjectures do not establish error. In addition, there is no requirement that the lands included in a KGS be "proven productive." The limits of a KGS encompass acreage that is presumptively productive. See 43 CFR 3100.0-5(a).

Appellant's assertion that the December 1981 evaluation determined that a majority of the acreage was not KGS is not correct. The December 1981 evaluation determined that a small area of specified lands were within an unnamed, undefined KGS based on a specific gas discovery. The 18 additional wells that were completed in the first 4 months of 1982 led to the May 1982 evaluation of this area and the further extension of the KGS.

We cannot conclude that appellant has met his burden of showing that the Government's determination is in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Gail M. Frazier  
Administrative Judge

